the necessary leave of absence for that period; that payment be made to them or their representatives during their absence from civil duty of their full civil pay, less a deduction on account of Navy or Army pay or allowance * * * *; and that this recommendation shall be deemed to apply to the cases of teachers * * * * who have left or are about to leave for active service.'" On the faith of this circular plaintiff joined the army. Later the defendant rescinded the resolution referred to. In an action to recover arrears of salary, *held* there was a contract between the parties whereby defendant was obligated to make the payments provided for in the resolution. *Davies* v. *Rhondda District Urban Council,* (Ct. of App., 1917), 87 L. J. R. (K. B.) 166.

The very natural question as to whether the resolution was a moving reason for the act of plaintiff, his enlistment, is disposed of by the finding of the court that he did so "on the faith of that resolution." See 12 HARV. L. REV., 515 *et. seq.*: 14 MICH. L. REV. 570, 573 *et seq.; Martin* v. *Meles,* 179 Mass., 114, 117; *Wisconsin & Michigan Ry. Co.* v. *Powers,* 191 U. S. 379, 386. In the principal case a further question might be made as to whether the resolution was not a mere declaration of intention to be liberal the carrying out of which was later found to be too onerous or was repented of. The fact that the resolution was in terms applicable not only to those who should enter the service but also to those who had already done so would seem to give some color to such view. Certainly the court reached what would seem to be a just result.

CRIMINAL LAW—"PUBLIC TRIAL" — WHAT CONSTITUTES.—The defendant was on trial for a crime connected with a train robbery. The trial aroused more than ordinary interest. Considerable ill feeling had developed and fights, outside the court room, had been reported to the presiding judge. Near the end of the trial the judge ordered the court cleared of all spectators except relatives of the defendants, members of the bar, and newspaper reporters. The defendant's objection to this excluding order was overruled, but on appeal it was *held* that he had been deprived of his right to a "public trial," a public trial being a trial at which the public is free to attend. *Davis* v. *United States,* 247 Fed. 394.

Similar exclusions have been *held* not to deprive the defendant of his right to a public trial when made to preserve order in the court room, *Stone* v. *People,* 3 Ill. (2 Scam.) 326; *People* v. *Tugwell,* 32 Calif. App. 520. And likewise, similar exclusions, temporarily made for the purpose of alleviating the embarrassment of a witness who was testifying to matter rather disgusting and salacious in its details, did not deprive the defendant of his right to a public trial, *Grimmett* v. *State* 22 Tex. App. 36; *State* v. *Callahan,* 100 Minn. 63. If the spectators at the trial leave on the suggestion from the judge that the evidence about to be given is not fit for a right minded person to hear, but given with a qualification that he has no actual power to exclude them from the court room, the defendant is not deprived of his right to a public trial, *People* v. *Gregory,* 8 Cal. App. 738; *State* v. *McCool,* 34 Kan. 617. And the defendant may waive his right

to a public trial, *Dutton* v. *State,* 123 Md. 373; *State* v. *Keeler,* 52 Mont. 205. There is, however, a direct conflict on the question as to whether the trial judge may make an exclusion similar to the one made in the instant case when the testimony about to be given is scandalous, immoral, indecent, disgusting, obscene, or such as might shock the public morals. Contrary to the doctrine of the instant case similar exclusions have been upheld upon the theory that the defendant's right to a public trial is a right to a trial that is not secret; further, that the defendant must show prejudice when there has been a violation of what they term a "literal right;" and, that there is a discretion resting in the judge to exclude as above when he thinks the testimony will injure public morals, *State* v. *Nyhus,* 19 N. D. 326; *Reagan* v. *United States,* 202 Fed. 488; *State* v. *Johnson,* 26 Idaho 609; *Benedict* v .*People,* 23 Colo. 126; *Robertson* v. *State,* 64 Fla. 437. The authorities in accord with the instant case, while admitting that circumstances may sometimes justify an exclusion order, are to the effect that a public trial is a trial at which the public is free to attend without arbitrary restrictions as to particular classes; and, further, that the defendant need not show prejudice, but that damages will be presumed from the violation of his constitutional right, *State* v. *Osborne,* 54 Ore. 289; *State* v. *Hensley,* 75 Oh. St. 255; *People* v. *Hartman,* 103 Calif. 242; *Tilton* v. *State,* 5 Ga. App. 59; *People* v. *Murray,* 89 Mich. 276; *State* v. *Keeler,* 52 Mont. 205. In *State* v. *Keeler* (*supra*) it was said that the constitutional provision giving the defendant in a criminal case a public trial would be meaningless if the excluding order was upheld, for most of those admitted under the excluding order would of necessity be in attendance upon the trial of every felony case as constituents of the judicial machinery. In *State* v. *Osborne* (*supra*) the court thought that the exclusion of the general public might injure the defendant by giving the jury a bad impression and by depriving him of the right to have his friends present to counteract the bad effect of being accused of a criminal offence.

ELECTIONS—VOTES CAST—INELIGIBILITY OF CANDIDATE RECEIVING LARGEST VOTE.—Plaintiff was a candidate for the office of sheriff at an election of the General Assembly in grand committee. His only opponent had resigned from the Assembly on the day before election, because the State Constitution declared an assemblyman ineligible for the office of sheriff. Such resignation, however, was ineffective as a vacation of the office resigned, no successor having been appointed. A statement of the candidate's ineligibility had been made to the Assembly before election. Plaintiff, who received only 37 out of a total of 116 votes, brings *mandamus* against the Attorney General to compel approval of his bond as sheriff. *Held,* that the votes were not cast in such wilful defiance of law as to be thrown away, and therefore the plaintiff, not having received a majority, had not been elected. *Sanders* v. *Rice,* (R. I., 1918), 102 Atl. 914.

The weight of American authority is with the principal case. The so-called English rule, followed in a few American jurisdictions, is *contra* with certain modifications. In *Rex* v. *Hawkins,* 10 East 211, announce-